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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN JOSE DIVISION
8

9
10 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, a
11 Pennsylvania Corporation

12 Plaintiff,

13 v.

14 RESOURCE DEVELOPMENT SERVICES,
INC., JAMES LUCERO, et. al,

15 Defendants
16
17
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No. CV 10-01324 JF

**NOTICE OF JOINDER BY
DEFENDANT GIBSON'S
RESOURCE GROUP IN THE
PENDING MOTION TO DISMISS
THE 2ND AMENDED COMPLAINT
AND MOTION TO DISMISS**

**Judge: The Hon. Jeremy Fogel
Time: 9:00 AM
Date: April 15, 2011
Ctrm: 3
Floor: 5**

Action Filed: March 28, 2010
No Trial Date

19
20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21 **PLEASE TAKE NOTICE** that defendant GIBSON'S RESOURCE GROUP,

22 (hereinafter "GRG"), hereby joins in the pending Motion to Dismiss and Motion to Strike
23 Plaintiff's 2nd Amended Complaint filed on January 31, 2011, by Defendant Environmental
24 Resource Recovery, Inc., dba and sued as Valley Recycling. The matter will be heard by this
25 Court on April 15, 2011, at 9:00 a.m., or as soon thereafter as the matter can be heard, in
26 Courtroom NO. 3 on the fifth floor of the United States Courthouse, located at 280 South 1st
27 Street in San Jose, California 95113.

28 GRG requests that its joinder in the motion be considered at the April 15, 2011 hearing.

1 **I. INTRODUCTION**

2 GRG moves for dismissal of the Second Amended Complaint and to strike improperly
3 included paragraphs therein on the same grounds as being argued by Defendant Valley Recycling
4 in its motion for the same relief.

5 **II. REQUEST FOR JUDICIAL NOTICE AND INCORPORATION BY REFERENCE**

6 In the interest of Judicial Economy GRG incorporates herein by reference the
7 Memorandum of Points and Authorities in Support of Defendant Valley Recycling's Motion to
8 Dismiss Plaintiff's Second Amended Complaint and Motion to Strike (Filed January 31, 2011;
9 Document No. 147) and the supporting Request for Judicial Notice (Filed January 31, 2001;
10 Document No. 148), because the arguments set forth therein apply with equal force to GRG.
11 Additionally, this brief has been intentionally drafted following the outlines of preceding Joinder
12 Motions in the hope of saving the Court and all parties time in their review of this brief. The
13 balance of this Joinder Motion briefly discusses the facts as they pertain to GRG.

14 **III. BACKGROUND OF PACIFIC COAST RECYCLING**

15 Defendant GRG is a recycling business that has operated in Santa Clara County for many
16 years. GRG's sole connection to these proceedings is that it contracted with RESOURCE
17 DEVELOPMENT SERVICES, INC. (hereinafter "RDS") to dispose of Green Waste at Waste
18 Management Corp.'s Kirby Canyon Landfill (hereinafter "KCL"). All such transactions have
19 been made in the ordinary and proper course of business; GRG has not been a part of any
20 fraudulent scheme.

21 **IV. ARGUMENT AND CONCLUSION**

22 GRG is specifically mentioned in the Second Amended Complaint only 6 times
23 (excluding the caption, the headings for the 4th through the 7th Causes of Action, the signature line
24 for its attorney, and the proof of service). These 6 instances occur in ¶22 identifying GRG's
25 corporate existence, in ¶58 identifying GRG with the other defendants as a "trucking company
26 defendant", in ¶66 with other company defendants alleging GRG knew of the proper procedures
27 for processing weight tickets, in, and grouped in ¶99 with the other defendants in a general
28 allegation of engaging in a conspiracy.

1 The only other place in which GRG is specifically referenced is ¶ 64 and ¶77(a). In ¶64 it
 2 is alleged “...that KCL employees permitted unprocessed and misclassified loads to enter KCL
 3 in exchange for improper monetary payments ...made to them directly by some of the trucking
 4 company defendants, including but not limited to Pacific Coast Recycling... In ¶77(a) Jerry
 5 Gibson is alleged to have “delivered an envelope of cash on behalf of Lucero to scale house
 6 operator, Sandy Shockley”

7 If GRG was answering the 2nd Amended Complaint, it would admit to its corporate
 8 existence, that it engage in trucking waste material, and that it is a defendant, however, GRG
 9 could only and would obviously deny the general allegations of conspiracy. This leave only two
 10 specific allegations against GRG in ¶64 and ¶77(a) of the 2nd Amended Complaint.

11 Paragraph 64 alleges that GRG knew the proper procedures for weight tickets and did not
 12 follow the procedures. This allegation is based on the naked assertion that there is one universal
 13 procedure for waste disposal and any person or company who does not follow this universal
 14 procedure must somehow be involved in inappropriate behavior.

15 The allegations against GRG in ¶64 are yet another example of Plaintiff’s desire to
 16 attribute fraudulent intentions to otherwise innocent conduct. In ¶64 Plaintiffs’ allege:

17 ...that KCL employees permitted unprocessed and misclassified loads to enter KCL in exchange
 18 for improper monetary payments ...made to them directly by some of the trucking company
 19 defendants, including but not limited to Pacific Coast Recycling, A&A Recycling Disposal, All
 20 Trash Recycling, Gibson Resource Group, and Nogalera Trucking.

21 Assuming Arguendo that GRG made some of the alleged payments (which it did not), the
 22 payment(s) to KCL employees by some of the Trucking Company Defendants or their
 23 representatives would be wholly consistent with ¶45 of Plaintiff’s 2nd Amended Complaint:

24 From time to time, however, situations would arise where RDS's account with KCL was delinquent,
 25 closed, and/or over the credit limit, and therefore, in those instances, **the trucking company**
 26 **defendants were required to directly submit payments to Waste Management** before being
 27 permitted to dispose of loads at KCL. (2nd Amended Complaint ¶45) (emphasis added)

28 Plaintiff’s 2nd Amended Complaint at ¶64 does not provide any information regarding
 when said alleged improper transfers took place over the three year period in Plaintiff’s
 pleadings. The Trucking Company representatives nor the KCL representatives involved in these
 alleged improper payments were not identified and lastly no monetary information was provided.

1 Defendant GRG can not hope to defend itself from an allegation such as this which has a
2 manifest lack of particularity.

3 Paragraph 77(a) of the 2nd Amended Complaint alleges:

4 Specifically, Jerry Gibson, owner of Gibson Resource Group, personally delivered an envelope of
5 cash on behalf of Lucero to scale house operator, Sandy Shockley, an active participant in the
6 scheme.

7 This allegation, merely states that Mr. Gibson allegedly gave money to an employee of
8 KCL on one occasion, a slightly more specific reference to a transaction alleged in ¶64 of the 2nd
9 Amended Complaint. All of the arguments militating against the viability of this allegation are
10 outlined supra at pg 3, L15-28 and pg 4, L1-2. This allegation, without more, could be made
11 against each and every person or company who/that (at any time) disposed of waste at KCL, so
12 long as their truck was processed by Scale House Operator Sandy Shockley.

13 For the same reasons set forth in Valley Recycling's Memorandum of Points and
14 Authorities and this Brief on Joinder, the 2ND Amended Complaint should be dismissed and/or
15 restated more definitely as against Gibson's Resource Group and Plaintiff's improperly repeated
16 request for punitive damages as set forth in Paragraph 89 in Plaintiff's 2ND Amended Complaint
17 should be stricken.

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19 Respectfully submitted,

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21 DATED: February 9, 2011

22 Law Offices of Steven E. Springer

23 /S/

24 Steven E. Springer,
25 Attorneys for Gibson Resource Group, Inc.,
26 erroneously sued as Gibson's Resource Group
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